

ORDINANCE NO. 3088

**ORDINANCE TO ESTABLISH A PUBLIC AUTHORITY
PURSUANT TO CALIFORNIA WELFARE AND INSTITUTIONS
CODE SECTION 12301.6**

The Board of Supervisors of the County of San Luis Obispo, State of California, ordains
as follows:

SECTION 1: Chapter 8.90 of the County code is hereby amended to read as follows:

8.90.010 Creation and Purpose.

Pursuant to Welfare and Institutions Code Section 12301.6, the San Luis Obispo County Board of Supervisors establishes a Public Authority to provide for the delivery of In-Home Supportive Services, subject to applicable federal and state laws and regulations, and to the limitations set forth in this chapter. The name of the Public Authority shall be In-Home Supportive Services Public Authority for San Luis Obispo County (Authority). (Ord. 2969 § 1 (part), 2002)

8.90.020 Definitions.

For purposes of this chapter, the following definitions apply:

- (a) "Authority" means the In-Home Supportive Services Public Authority for San Luis Obispo County.
- (b) "Board of Supervisors" means the Board of Supervisors of the County of San Luis Obispo.
- (c) "Consumer" means a person eligible for and authorized to receive In-Home Supportive Services.

(d) "County" means San Luis Obispo County.

(e) "Governing Body" means the governing body for the In-Home Supportive Services Public Authority for San Luis Obispo County.

(f) "In-Home Supportive Services (IHSS)" means In-Home Supportive Services as described in Welfare and Institutions Code Section 12300.

(g) "Provider" means a person who provides authorized In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.030 Governing body characteristics.

The Governing Body of the Authority shall consist of the members of the Board of Supervisors of the County of San Luis Obispo.

8.90.040 Advisory Committee

As may be required by the Welfare and Institutions Code, the County shall appoint an advisory committee on In-Home Supportive Services. This committee shall consist of not more than eleven (11) members of whom at least fifty (50) percent shall be individuals who are current or past users of personal assistance services paid for through public or private funds or are recipients of services under Article 7, Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code (Section 12300 et seq.). Prior to selecting the members of this committee, the Board of Supervisors shall solicit recommendations of qualified members from the advisory committee and through fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

8.90.050 (Repealed and Reserved)

8.90.060 Character of the Authority.

(a) The Authority shall be an entity separate from the County of San Luis Obispo and shall file the Statement of Fact for the Roster of Public Agencies as required by Government Code Section 53051.

(b) The Authority shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the powers conferred upon it by Welfare Institutions Code Sections 12300, et seq. (Ord. 2969 § 1 (part), 2002)

8.90.070 Status of Authority Employees, Providers, and Officers.

Authority personnel, providers and members of the Authority governing body shall not be deemed to be employees of the County of San Luis Obispo for any purpose. (Ord. 2969 § 1 (part), 2002)

8.90.080 Authority Functions.

(a) The Authority shall carry out the following functions:

- (1) The provision of assistance to consumers in finding In-Home Supportive Services providers through the establishment of a registry;
- (2) Investigation of the qualifications and background of potential In-Home Supportive Services providers;
- (3) Establishment of a referral system under which In-Home Supportive Services providers shall be referred to consumers;
- (4) Providing for access to training for providers and consumers;
- (5) Ensuring that the requirements of the personal care option pursuant to Title XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met;

(6) Adopt rules and regulations for the administration of the Authority consistent with the provisions of this chapter;

(7) Performing any other such functions as necessary for the delivery of In-Home Supportive Services.

(b) Notwithstanding subsection 8.90.080(a)(4), the Authority and/or County shall not be obligated to provide training directly, to pay for training provided privately or in the community, to pay for the providers' time spent in training, to accompany consumers to training, to pay for transportation to training or to pay for any materials required by the training, to screen or be responsible for content of training it tells providers or consumers is available. The Authority and/or County shall not be obligated to ensure that any provider or consumer attend or complete training.

(c) The County shall have the exclusive responsibility for and the Authority shall not be responsible for:

- (1) Authorizing services for an In-Home Supportive Services consumer;
- (2) Determining a consumer's need for In-Home Supportive Services, the level and quality of services required, and the eligibility of individuals to be served;
- (3) Conducting the initial or any subsequent assessment of need for services;
- (4) Terminating the consumer's participation in the In-Home Supportive Services program.

(d) Prior to initiating the delivery of In-Home Supportive Services through the Authority, as described in this chapter, the County and the Authority shall enter into an agreement specifying the purposes, scope and nature of the agreement, the rules and responsibilities of each party including the provisions which insure compliance with all

applicable state and federal labor laws and compliance with all statutory and regulatory provisions applicable to the delivery of In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.090 Employer of Record.

The Authority shall be deemed to be the employer of record of In-Home Supportive Services providers referred to consumers within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Consumers shall retain the right to hire, fire and supervise the work of any In-Home Supportive Services personnel providing services to them. (Ord. 2969 § 1 (part), 2002)

8.90.100 Consumer Control.

(a) The Authority shall have no authority or jurisdiction to regulate, control, or limit the rights and responsibilities of consumers of In-Home Supportive Services to hire, fire or to supervise providers. The right to supervise includes, but is not limited to, the right to determine matters such as work schedules, tasks and duties, assignments and direction of work, methods and standards of caring and conduct, discipline, provision for safety and security control of premises, any in-home living or other accommodations, and final resolution of concerns, problems and complaints relating to such supervision. Consumers retain such rights and responsibilities just as they held such rights and responsibilities independent of the County prior to the formation of the Authority.

(b) Consumers of In-Home Supportive Services may select In-Home Supportive Services providers who are not referred to them by the Authority. Those providers shall nevertheless be referred to the Authority for the purposes of wages, benefits, and other terms and conditions of employment. (Ord. 2969 § 1 (part), 2002)

8.90.110 Payroll Functions.

The creation and operation of the Authority shall not alter, require the alteration of, or interfere with the state payroll systems and other provisions of Welfare and Institutions Code Section 12302.2 for individual providers of In-Home Supportive Services, or affect the state's responsibility with respect to unemployment insurance or workers' compensation for providers of In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.120 (Repealed and Reserved)

8.90.130 Labor Relations.

Due to the special and critical health care services provided through the In-Home Supportive Services program, the Board of Supervisors finds that any interruption of such services would pose an imminent threat to the health and safety of the consumers of In-Home Supportive Services and to the community. In order to minimize the likelihood of such interruption and thereby protect the health and safety of consumers and to promote harmony and productive labor relations between the Authority and any labor organization which seeks to represent or represents the providers of services to consumers of In-Home Supportive Services:

(a) Authority providers shall be entitled to all the rights conferred upon them by Meyers-Milias-Brown Act, Government Code Section 3500, et seq., including the right to be represented in their employment relationship with the Authority by an employee organization of their choice and the right to meet and confer with the Authority with regard to wages, benefits and any other terms and conditions of employment.

(b) The Authority governing body shall establish rules and regulations respecting the labor relations responsibility of the Authority and such rules shall provide that a

showing of interest of at least twenty percent of the eligible providers shall be a sufficient showing of interest for any labor organization to initiate any election or representation procedures established by the Authority for the purposes of certifying an exclusive representative for the purposes of collective bargaining.

(c) Any collective bargaining agreement between the Authority and any labor organizations certified to represent the Authority employees and providers of In-Home Supportive Services shall be subject to the limitations of this title and to ratification in its entirety (i.e., all provisions of such agreement shall be subject to the same vote) by a simple majority of the votes cast in a ballot in which all providers of In-Home Supportive Services, as recognized by the Authority, shall be eligible to participate. Final adoption of any such agreement shall be by simple majority vote of the Authority governing board.

(d) The Authority shall have a non-strike clause in any and all collective bargaining agreements with providers and personnel of the Authority.

(e) The Authority shall take all legal action necessary to bar any strike or other concerted interruption of services to In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.140 Fiscal Provisions.

In establishing the Authority, the Board of Supervisors recognizes that the funding of In-Home Supportive Services is the product of a complex relationship of federal, state and county financing, and that the ability of the Authority to operate and to negotiate wages and benefits with providers of In-Home Supportive Services is contingent upon the availability of adequate funding. Nothing in this article is intended to require the County to appropriate or to transfer any funds for the operation of the Authority or for the payment

of wages or benefits for In-Home Supportive Services, except as expressly provided in an agreement between the County and the Authority.

(a) The total of all administrative costs, wages and benefits proposed or established by the Authority shall be consistent with the County budget. The Authority shall adopt its budget under the same laws, rules and policies that control the County budget process. The Authority shall not establish a payment rate, including costs of wages, benefits and operation, until the Authority determines that the funds necessary for such expenses are legally available.

(b) The establishment and operation of the Authority or application of Government Code Section 3500, et seq. shall not result in payments from the County's general fund beyond the amounts provided for in the County's annual budget, as amended from time to time.

(c) Consumer services shall not be reduced in order to fund the Authority to provide for the implementation of Government Code Section 3500, et seq., in regard to Authority personnel and providers.

(d) The maximum of County funds available in any given budget year for the wage and benefit negotiations, if any, shall be set by the Board of Supervisors as a part of the County's annual budget. While the establishment of this figure shall not obligate the County, it shall serve as the absolute limit to County costs for any increases negotiated in collective bargaining taking place that fiscal year. The absolute cap on annual County spending on wage or benefits increases shall not be affected by any potential changes in state or federal reimbursement rates.

(e) The Authority shall provide the County with the expenditure information necessary for the County to report to the California Department of Social Services in order to receive reimbursement for the state and federal share of the Authority costs.

(f) The Authority shall assist the County in developing and submitting the information and documentation necessary to obtain approval from the California Department of Social Services and the Department of Health Services for the Authority's reimbursement rate and rate adjustment.

(g) Payment for all services provided pursuant to this chapter is contingent upon the appropriation of county, state and federal funds for the purpose of providing In-Home Supportive Services. (Ord. 2969 § 1 (part), 2002)

8.90.150 Authority Liability.

The Authority is deemed not the employer of In-Home Supportive Services providers referred to consumers under this chapter for the purposes of liability due to the negligence or intentional torts of the In-Home Supportive Services providers. The Authority shall not be held liable for any action or omission of any In-Home Supportive Services providers whom the Authority did not list on a registry or otherwise refer to a consumer. (Ord. 2969 § 1 (part), 2002)

8.90.160 County Liability.

(a) The County shall be immune from any liability resulting from its implementation of this chapter and/or administration of the In-Home Supportive Services program pursuant to Welfare and Institutions Code Section 12301.6, et seq.

(b) Any obligation of the Authority, whether statutory, contractual or otherwise, shall be the obligation solely of the Authority and shall not be the obligation of the County

or the state of California. Any and all contracts, leases or other agreements, of any nature, including collective bargaining agreements, between the Authority and third parties other than the County shall contain an express provision advising the third party that the Authority is a separate governmental entity and that such agreement does not bind the County. (Ord. 2969 § 1 (part), 2002)

8.90.170 Indemnification.

(a) The Authority shall require any and all third parties contracting with the Authority, other than the County, to indemnify and hold harmless the Authority and County, to provide the Authority with written acknowledgment of such indemnification, and to maintain adequate levels of insurance, as determined by the County's risk manager, naming the Authority and County as an additional insured, excepting that recognized bargaining units shall not be obligated to indemnify the Authority, unless the result of a Memorandum of Understanding.

(b) The Authority shall require any registry contractor to fully indemnify the Authority and the County, to provide the Authority with written acknowledgment of such indemnification and to maintain adequate levels of insurance naming the Authority and the County as an additional insured on the required policies.

(c) The Authority shall indemnify, defend and hold harmless the County and its special districts, elected and appointed officers, employees and agents from and against any and all liability, including defense costs and legal fees, and claims for damages of any nature whatsoever, including but not limited to personal injury or property damages, arising from or connected with any act or omission of any officer, employee or contractor, including registry members, of the Authority. (Ord. 2969 § 1 (part), 2002)

8.90.180 Liability Insurance.

Without limiting its indemnification of the County as set forth above, the Authority shall acquire and maintain appropriate insurance in amounts and coverage types to be determined by the County's risk manager to be adequate and shall name the County and the members of the Board of Supervisors as additional insureds on the policies of insurance maintained by the Authority. (Ord. 2969 § 1 (part), 2002).

8.90.190 Termination.

If the ordinance codified in this chapter becomes invalid for any reason the Authority created by said ordinance shall cease to exist and the County shall immediately resume the provision of In-Home Supportive Services. The Board of Supervisors may abolish the Authority by repeal of said ordinance at any time. (Ord. 2969 § 1 (part), 2002)

8.90.200 Non-severability.

If the provisions of Section 8.90.160 are held invalid by a court of competent jurisdiction, each and any of said provisions shall not be deemed severable from other provisions of the ordinance codified in this chapter and the ordinance codified in this chapter shall be held invalid in its entirety. Except as otherwise provided in this section, if any other provision of the ordinance codified in this chapter shall be held invalid, the remainder of this chapter, to the extent it can be given effect, shall not be effected and to this end the provisions of the ordinance codified in this chapter are severable. (Ord. 2969 § 1 (part), 2002)

8.90.210 Disclaimers.

By establishing an Authority the County is assuming and undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers or

employees an obligation for breach of which it is liable and money damages to any person who claims that such breach proximately caused injury. (Ord. 2969 § 1 (part), 2002)

SECTION 2: This ordinance shall be declared in full force and effect from and after thirty (30) days from the date of its passage and shall be published once before the expiration of fifteen (15) days after the passage with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

INTRODUCED at a regular meeting of the Board of Supervisors held on the 2nd day of May, 2006, and PASSED and ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 16th day of May, 2006, by the following roll call vote, to wit:

AYES: Supervisors Harry L. Ovitt, Shirley Bianchi, Jerry Lenthall, James R. Patterson,
Chairperson K.H. 'Katcho' Achadjian

NOES: None

ABSENT: None

ABSTAINING: None

K.H. ACHADJIAN

Chairperson of the Board of Supervisors,
County of San Luis Obispo, State of California

ATTEST:

JULIE L. RODEWALD

County Clerk and Ex-Officio Clerk
of the Board of Supervisors, County
of San Luis Obispo, State of California

By: **C.M. CHRISTENSEN** Deputy Clerk

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

JAMES B. LINDHOLM, JR.
County Counsel

By: 
Chris Deputy County Counsel

Dated: 4-20-06